

## HUMAN SERVICES DEPARTMENT[441]

### Notice of Intended Action

#### **Proposing rule making related to child care centers, child development homes and child care homes and providing an opportunity for public comment**

The Human Services Department hereby proposes to amend Chapter 109, “Child Care Centers,” Chapter 110, “Child Development Homes,” and Chapter 120, “Child Care Homes,” Iowa Administrative Code.

#### *Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 237A.12.

#### *State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 237A.12.

#### *Purpose and Summary*

Pursuant to 2022 Iowa Acts, House File 2589, this proposed rule making amends rules to allow persons defined as physicians under Iowa Code section 135C.1 to conduct well-child checks, to expand to include chiropractors, because well-child checks are within their scope of practice.

These proposed amendments also modify other regulatory reductions to licensed child care center regulations in an effort to ease burdens on licensed child care centers. The regulatory reductions are based on a survey that was conducted with licensed child care center directors in response to the Governor’s Child Care Task Force. These amendments include modifications to written policies, changes in allowable points for director and supervisor eligibility, updates in radon requirements, reducing training requirements for those in school-age-only populations, and allowing information sharing regarding completed record checks.

#### *Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

#### *Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

#### *Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

#### *Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on September 13, 2022. Comments should be directed to:

Nancy Freudenberg  
Department of Human Services  
Hoover State Office Building, Fifth Floor  
1305 East Walnut Street  
Des Moines, Iowa 50319-0114  
Email: [appeals@dhs.state.ia.us](mailto:appeals@dhs.state.ia.us)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 109.4(2) as follows:

**109.4(2) Required written policies.** The child care center owner, board or director shall:

- a. No change.
- b. Develop and implement policies for enrollment and discharge of children, field trips and non-center activities, ~~transportation~~, discipline, nutrition, ~~and~~ health and safety policies and, if transporting children, transportation policy.
- c. to f. No change.
- g. ~~Develop~~ When serving children under the age of three, develop and implement a policy for responding to incidents of biting that includes the following elements.
  - (1) to (8) No change.
  - h. and i. No change.

ITEM 2. Amend paragraph **109.6(1)“e”** as follows:

e. Has achieved a total of 100 points obtained through a combination of education, experience, and child development-related training as outlined in the following chart:

EDUCATION	EXPERIENCE (Points multiplied by	CHILD DEVELOPMENT-
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		years of experience)		RELATED TRAINING
Bachelor's or higher degree in early childhood, child development, or elementary education	75	Full-time (20 hours or more per week) in a child care center or preschool setting	<del>20</del> <u>25</u>	One point per contact hour of training
Associate's degree in child development or bachelor's degree in a child-related field	<del>50</del> <u>60</u>	Part-time (less than 20 hours per week) in a child care center or preschool setting	10	
Child development associate (CDA) or one-year diploma in child development from a community college or technical school	<del>40</del> <u>45</u>	Full-time (20 hours or more per week) child development-related experience	10	
Bachelor's or higher degree in a non-child-related field	40	Part-time (less than 20 hours per week) child development-related experience	5	
Associate's degree in a non-child-related field or completion of at least two years of a four-year degree	<del>20</del> <u>25</u>	Registered child development home provider	10	
		Nonregistered family home provider	5	

(1) to (4) No change.

ITEM 3. Amend subrule 109.6(2) as follows:

**109.6(2) On-site supervisor.** The on-site supervisor is required to be present when the program has multiple sites or when a director is not routinely present for six hours daily. The center director must identify a person in charge during the on-site supervisor's absence. The on-site supervisor is responsible for the daily supervision of the center and must be on site daily either during the hours of operation that children are present or a minimum of ~~eight~~ six hours of the center's hours of operation. Information shall be submitted in writing to the child care consultant prior to the start of employment. Final determination shall be made by the department. Information shall be submitted sufficient to determine that the on-site supervisor meets the following minimum qualifications:

a. to c. No change.

d. Has achieved a total of 75 points obtained through a combination of education, experience, and child development-related training as outlined in the following chart:

EDUCATION		EXPERIENCE (Points multiplied by years of experience)		CHILD DEVELOPMENT- RELATED TRAINING
Bachelor's or higher degree in early childhood, child development, or elementary education	75	Full-time (20 hours or more per week) in a child care center or preschool setting	<del>20</del> 25	One point per contact hour of training
Associate's degree in child development or bachelor's degree in a child-related field	<del>50</del> 60	Part-time (less than 20 hours per week) in a child care center or preschool setting	10	
Child development associate (CDA) or one-year diploma in child development from a community college or technical school	<del>40</del> 45	Full-time (20 hours or more per week) child development-related experience	10	
Bachelor's or higher degree in a non-child-related field	40	Part-time (less than 20 hours per week) child development-related experience	5	
Associate's degree in a non-child-related field or completion of at least two years of a four-year degree	<del>20</del> 25	Registered child development home provider	10	
		Nonregistered family home provider	5	

(1) to (4) No change.

ITEM 4. Amend subrule 109.6(3) as follows:

**109.6(3) Director and on-site supervisor functions combined.** In a center where the functions of the center director and the on-site supervisor are accomplished by the same person, the educational and experience requirements for a center director shall apply. If the center director is serving in the role of the on-site supervisor, the director shall be on site daily either during the hours of operation or a minimum of at least ~~eight~~ six hours of the center's hours of operation. If the staff person designated as the on-site supervisor is temporarily absent from the center, another responsible adult staff shall be designated as the interim on-site supervisor.

ITEM 5. Amend subparagraph 109.6(6)"d"(6) as follows:

(6) A center considering involvement of a person who has had a national criminal history check at another center may request information from that center. That center may provide ~~the following that~~ information in writing upon a center's request, using Form 470-4896, ~~National Criminal History Check Confirmation~~. If the person being considered for employment has not had involvement with child care in the past six months, a new national criminal history check must be completed.

1. ~~Date of most recent national criminal history check conducted by the center on the person in question, and~~

2. ~~Whether or not the national check process resulted in clearance of the person for involvement with child care.~~

ITEM 6. Amend paragraph 109.7(1)"e" as follows:

e. Minimum health and safety trainings, approved by the department, in the following areas:

(1) to (10) No change.

Minimum health and safety training may be required if content has significant changes which warrant that the training be renewed.

Child care staff employed in programs that only serve children over the age of three are exempt from taking health and safety trainings under subparagraphs 109.7(1)"e"(2) and 109.7(1)"e"(6).

ITEM 7. Amend paragraph 109.7(3)"e" as follows:

e. Minimum health and safety trainings, approved by the department, in the following areas:

(1) to (10) No change.

Child care staff employed in programs that only serve children over the age of three are exempt from taking health and safety trainings under subparagraphs 109.7(3)“e”(2) and 109.7(3)“e”(6).

ITEM 8. Amend paragraph **109.10(1)“a”** as follows:

a. *Preschool-age children.* For each child five years of age and younger not enrolled in kindergarten, the child care center shall require an admission physical examination report, submitted within 30 days from the date of admission, signed by a licensed medical doctor, doctor of osteopathy, chiropractor, physician’s assistant or advanced registered nurse practitioner. The date of the physical examination shall be no more than 12 months prior to the first day of attendance at the center. The written report shall include past health history, status of present health including allergies, medications, and acute or chronic conditions, and recommendations for continued care when necessary. Annually thereafter, a statement of health condition, signed by a licensed medical doctor, doctor of osteopathy, chiropractor, physician’s assistant or advanced registered nurse practitioner, shall be submitted that includes any change in functioning, allergies, medications, or acute or chronic conditions.

ITEM 9. Amend paragraph **109.10(15)“a”** as follows:

a. The center shall have written emergency plans and diagrams for responding to fire, tornado, and flood (if area is susceptible to flood); and plans for responding to ~~intruders within the center~~, intoxicated parents, and lost or abducted children. In addition, the center shall have guidelines for responding or evacuating in case of blizzards, power failures, bomb threats, chemical spills, ~~earthquakes~~, or other disasters that could create structural damage to the center or pose health hazards. If the center is located within a ten-mile radius of a nuclear power plant or research facility, the center shall also have plans for nuclear evacuations. Emergency plans shall include written procedures including plans for the following:

(1) to (7) No change.

ITEM 10. Amend subrule 109.11(4) as follows:

**109.11(4) Bathroom facilities.** At least one functioning toilet and one sink for each 15 children ages two years and older shall be provided in a room with natural or artificial ventilation. Training seats or chairs may be used for children under two years of age. New construction after November 1, 1995, shall provide for at least one sink in the same area as the toilet and, for centers serving children two weeks to two years of age, shall provide for at least one sink in the central diapering area. At least one sink shall be provided in program rooms for infants and toddlers or in an adjacent area other than the kitchen. New construction after April 1, 1998, shall have at least one sink provided in the program rooms for infants and toddlers.

ITEM 11. Amend subrule 109.11(7) as follows:

**109.11(7) Environmental hazards.**

a. No change.

b. Within one year of being issued an initial or renewal license, centers operating in facilities that are at ground level, use a basement area as program space, or have a basement beneath the program area shall have radon testing performed as ~~prescribed by the state department of public health at 641—Chapter 43. Retesting shall be accomplished at least every two years from the date of the initial measurement outlined in a nationally recognized radon measurement protocol.~~ If testing determines confirmed radon gas levels in excess of 4.0 picocurie per liter, ~~a plan using radon mitigation procedures established by the state department of public health shall be developed with and approved by the state department of public health prior to a full license being issued.~~

(1) If radon mitigation is in place, retesting shall occur at least every two years from initial measurements to confirm radon gas levels are below 4.0 picocurie per liter.

(2) If initial testing confirmed radon gas levels are below 4.0 picocurie per liter, retesting shall occur at least every five years from initial measurements.

c. No change.

d. Centers that operate before and after school programs and summer-only programs that serve only school-age children and that operate in a public school building are exempted from testing for lead, ~~radon~~, and carbon monoxide.

*e.* Centers that operate before and after school programs and summer-only programs that serve only school-age children and that operate in a public school building are required to follow radon testing requirements outlined in Iowa Code section 280.32 as enacted by 2022 Iowa Acts, House File 2412, section 1.

ITEM 12. Amend paragraphs **110.9(4)“d”** and **“e”** as follows:

*d.* An admission physical examination report signed by a licensed ~~physician or a designee in a clinic supervised by a licensed physician~~ medical doctor, doctor of osteopathy, chiropractor, physician’s assistant or advanced registered nurse practitioner.

(1) to (4) No change.

*e.* For children under the age of six, a statement of health condition signed by a ~~physician or designee~~ licensed medical doctor, doctor of osteopathy, chiropractor, physician’s assistant or advanced registered nurse practitioner and submitted annually from the date of the admission physical examination. For a child who is enrolled in school, a statement of health status signed by the parent or legal guardian may be substituted for the ~~physician~~ statement of health.

ITEM 13. Amend paragraph **110.15(1)“c”** as follows:

*c.* In addition to the 14 children not in school, no more than 4 2 children who attend school may be present.

ITEM 14. Amend paragraphs **120.9(2)“d”** and **“e”** as follows:

*d.* An admission physical examination report signed by a licensed ~~physician or the designee in a clinic supervised by a licensed physician~~ medical doctor, doctor of osteopathy, chiropractor, physician’s assistant or advanced registered nurse practitioner.

*e.* For children under the age of six, a statement of health condition signed by a ~~physician or designee~~ licensed medical doctor, doctor of osteopathy, chiropractor, physician’s assistant or advanced registered nurse practitioner submitted annually from the date of the admission physical examination. For a child who is enrolled in school, a statement of health status signed by the parent or legal guardian may be substituted for the ~~physician~~ statement of health.